

FILED  
Clerk  
District Court

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OCT 12 2005

For The Northern Mariana Islands  
By \_\_\_\_\_  
(Deputy Clerk)

## Attorneys for Defendants

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN MARIANA ISLANDS**

Notice is hereby given that Edward Camacho, in his official and personal capacities; the Department of Public Safety (an agency of the government of the Commonwealth of the Northern Mariana Islands), and Elias Saralu, individually, Defendants in the above named case, hereby appeal to the United States Court of Appeals for the Ninth Circuit from the Notice of Order Granting Motion for Award of Attorney's Fees and Certain Costs entered in the action on September 1, 2005.

Dated this 12 day of October, 2005.

  
David Lochabay  
Asst. Attorney General  
Office of the Attorney General  
Attorneys for Defendants

FILED

Clerk

District Court

SEP 01 2005

For The Northern Mariana Islands  
By \_\_\_\_\_  
(Deputy Clerk) *[Signature]*IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN MARIANA ISLANDS

10 STEVEN PARKS, ) Civil Action No. 04-0013  
11 Plaintiff )  
12 v. ) NOTICE OF ORDER  
13 ) GRANTING MOTION FOR  
14 EDWARD CAMACHO, et al ) AWARD OF ATTORNEY'S FEES  
15 Defendants ) AND CERTAIN COSTS  
16 \_\_\_\_\_ )

17 THIS MATTER came before the court on Thursday, September 1, 2005, for  
18 hearing of plaintiff's motion for an award of attorney's fees. Plaintiff appeared by and  
19 through his attorney, David G. Banes; defendants filed an opposition but no one  
20 appeared at the hearing to argue.  
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22 THE COURT, having considered the written and oral arguments of counsel,  
23 adopted its tentative ruling to grant the motion, for the following reasons:  
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25 By the terms of the Settlement Agreement and Release, the parties stipulated  
26

*[Handwritten Signature]*  
ENTERED  
AO 72  
(Rev. 8/82)  
09/08/2005 Q

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1 that this court would retain jurisdiction to enforce the terms of the settlement  
2 agreement and to "determin[e] the amount of Plaintiff's attorney's fees, if any."

3 The fee applicant bears the burden of documenting the appropriate hours expended  
4 in the litigation. As anticipated by the settlement agreement, plaintiff has submitted  
5 evidence in support of the hours he worked. Hensley, 461 U.S. at 433, 103 S.Ct. at  
6 1939. Defendants have filed their opposition.

7 This lawsuit sought relief for plaintiff under 42 U.S.C. § 1983 and the  
8 Americans With Disabilities Act, 42 U.S.C. § 12101 *et seq.* In brief, the complaint  
9 alleged that plaintiff is a person with pronounced emotional and mental disabilities,  
10 which have led to almost forty encounters with local police (but no prosecutions) and  
11 are severe enough to have warranted psychiatric hospitalization several times. It  
12 further alleged that, due to their many encounters with him, defendants knew or  
13 should have known of plaintiff's disabilities and alcoholism and should have dealt  
14 with him appropriately. The complaint further alleged that plaintiff has suicidal  
15 tendencies and a predilection for self-mutilation, that defendants were aware of it, and  
16 that had they properly frisked plaintiff after taking him into custody, they would have  
17 discovered the cutting tool he later used to injure himself. The lawsuit sought general  
18 damages, punitive damages, and a mandatory injunction requiring defendants to train  
19 personnel and implement procedures to ensure proper treatment in the future of  
20 persons with emotional and mental disabilities. The settlement agreement was limited  
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1 to assisting plaintiff to travel to the mainland United States to enter an appropriate  
2 medical facility. Defendants did not admit liability.  
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4 Because the settlement agreement reserved to the court the jurisdiction to  
5 enforce its terms and to award attorney's fees, and because plaintiff's counsel achieved  
6 a "material alteration of the legal relationship between the parties"<sup>1</sup> by obtaining for  
7 plaintiff access to the treatment he requires and which is not available locally, the  
8 court concludes that plaintiff is a "prevailing party" entitled to an award of attorney's  
9 fees within the meaning of 42 U.S.C. § 1988. See e.g. Maher v. Gagne, 448 U.S. 122,  
10 100 S.Ct. 2570 (1980)

11 The bedrock law regarding attorney's fees in civil rights cases was enunciated in  
12 Hensley v. Eckerhart, 461 U.S. 424, 433, 103 S.Ct. 1933, 1939 (1983), and Farrar v.  
13 Hobby, 506 U.S. 103, 113 S.Ct. 566 (1992). Hensley established several important  
14 principles regarding attorney's fees. The first is that a prevailing plaintiff should  
15 ordinarily be entitled to recover attorney's fees unless special circumstances make such  
16 an award unjust. Hensley, 461 U.S. at 430, 103 S.Ct. at 1937. Second, that a  
17 reasonable attorney's fee will usually be the hours reasonably expended multiplied by a  
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Texas State Teachers Ass'n. v. Garland Independent School Dist., 489 U.S. 782,  
792-793, 109 S.Ct. 1486 (1989).

reasonable hourly rate (i.e. the “lodestar” amount).<sup>2</sup> Hensley, 461 U.S. at 434, 103 S.Ct. at 1939. Third, that it is the duty of the attorney seeking fees to submit evidence of the hours worked and the fee rate claimed; absent such a submission, the court may reduce the fee. *Id.* Fourth, that “results obtained” is particularly crucial when plaintiff “prevails” on only some of his claims. *Id.*, 461 U.S. at 435-436, 103 S.Ct. at 1940. And, fifth, work of unrelated, unsuccessful claims will not be compensated. *Id.*

Farrar further refined the elements which must be kept in mind when assessing a request for attorney's fees. First, the Supreme Court reiterated that the most critical factor for the court to consider regarding an award of fees is the degree of success obtained. Farrar v. Hobby, 506 U.S. 103, 111 (1992) ("[A] plaintiff 'prevails' when actual relief on the merits of his claim materially alters the legal relationship between the parties by modifying the defendant's behavior in a way that directly benefits the plaintiff"). A plaintiff who wins only nominal damages is still a prevailing party. *Id.* at 112. Second, although an attorney fee calculated as hours reasonably expended multiplied by the attorney's reasonable rate is the norm, this approach may result in an excessive fee where plaintiff has achieved only partial or limited success on the claims.

The lodestar formula supplies the baseline, which in most cases results in an adequate award of fees and costs. Here, no fee multiplier was requested, so the court need not consider adjusting the "lodestar" figure using the factors set forth in Kerr. See Kerr v. Screen Extras Guild, Inc., 526 F.2d 67, 70 (9th Cir. 1975), *cert. denied* 425 U.S. 951, 96 S.Ct. 1726 (1976).

1       Farrar, 506 U.S. at 114, 113 S.Ct. at 574. Third, in fixing fees under the civil rights  
2 attorney's fees provision, the court must give primary consideration to the amount of  
3 the damages awarded (this lawsuit was settled by the parties for \$3,300.00) as  
4 compared to the amount sought (general damages of at least \$100,000.00, punitive  
5 damages, and a mandatory injunction). Further, "[w]here recovery of private damages  
6 is the purpose of...civil rights litigation, a district court, in fixing fees, is obligated to  
7 give primary consideration to the amount of damages awarded as compared to the  
8 amount sought." *Id.* citing Riverside v. Rivera, 477 U.S. 561, 585 (1989). Fourth, the  
9 court is to determine a reasonable fee under the circumstances of the case. Farrar,  
10 506 U.S. at 115-116, 113 S.Ct. at 575. Finally, the court must recognize that, in some  
11 cases, even a plaintiff who formally prevails on civil rights claims should receive no fee  
12 at all. *Id.*

13       In the Ninth Circuit, there is a strong presumption that the lodestar amount  
14 represents a reasonable fee. *See e.g.* Morales v. City of San Raphael, 96 F.3d 359, 363  
15 (9th Cir. 1996); Harris v. Marhoefer, 24 F.3d 16, 18 (9th Cir. 1994). Given this  
16 presumption, it is often the case that many of what have come to be called the Kerr  
17 factors, *supra*, are subsumed in the lodestar calculation. Cunningham v City of Los  
18 Angeles, 879 F.2d 481, 487 (9th Cir. 1988) *cert. denied*, 493 U.S. 1035, 110 S.Ct. 757  
19 (1990). However, two of the Kerr factors deserve special mention here. First, this  
20 was an unusually difficult plaintiff. He has a history of severe mental and emotional  
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1 disabilities---complicated by alcoholism---which often manifest themselves in  
2 plaintiff's attempts to injure or kill himself. Two public advocacy agencies declined to  
3 represent him. Also, defendants are members of the police and public safety  
4 community. In this small community, all of the parties involved presumably know  
5 each other, making the lawsuit that much more difficult to prosecute. Finally, the  
6 court continues to recognize that there is an acute need for attorneys to take  
7 meritorious yet difficult and taxing lawsuits involving unpopular or undesirable causes  
8 or persons.

11 The court finds that plaintiff, as the prevailing party, is entitled to an award of  
12 reasonable attorney's fees and that to deny an award of fees would be unjust.  
13 Plaintiff's counsel has fulfilled his duty of submitting evidence of the hours spent on  
14 this matter. Having reviewed the summary of hours spent and the reasons for  
15 spending the time, the court finds the total hours claimed to be reasonable under the  
16 circumstances of this case. Additionally, the court finds the hourly rates claimed are  
17 reasonable within this community for attorneys of the experience and acumen  
18 involved in this case. Finally, the court believes that the results obtained for this  
19 plaintiff were significant and probably life-saving. Due to counsel's tenacity, plaintiff  
20 was finally able to begin receiving the treatment he needs. The degree of success  
21 achieved for plaintiff was substantial, even though the dollar amount was relatively  
22 small and involved expenses for plaintiff to travel to the mainland for treatment.

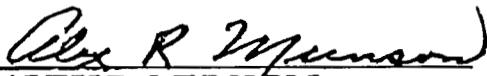
1 Finally, as alluded to above, the court finds the fees reasonable under the difficult  
2 circumstances of this case. Accordingly, for all these reasons,

3 IT IS ORDERED that plaintiff shall have an award of attorney's fees as  
4 follows: Attorney Robert O'Connor - 1.15 hours at \$280.00 per hour = \$322.00;  
5 Attorney David G. Banes - 50.6 hours at \$240.00 per hour = \$12,144.00; Attorney  
6 Joseph Horey - 1.0 hours at \$230.00 per hour = \$230.00; Attorney Eric Bozman -  
7 39.92 hours at \$180.00 per hour = \$7,185.60; Law Clerk Catherine Chang-Sanders -  
8 9.2 hours at \$175.00 per hour = \$1,610.00; Paralegal Auralou Sabangan - 9.75 hours at  
9 \$120 per hour = \$1,170.00; and, Law Clerk Jacob Ouslander - 29.35 hours at \$120.00  
10 per hour = \$3,522.00. The total of all fees awarded is \$26,183.60.

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12 Pursuant to 28 U.S.C. § 1920, plaintiff is awarded the following costs:  
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14 \$150.00 for the filing fee and \$17.31 for mileage, for a total award of costs of \$167.31.  
15 Other costs claimed are either not allowed by statute or are not properly documented.

16 IT IS SO ORDERED.

17 DATED this 1st day of September, 2005.

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ALEX R. MUNSON  
Judge